



DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

[2900-AR78]

Loan Guaranty: Loss-Mitigation Options for Guaranteed Loans

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) Loan Guaranty Service (LGY) is requesting public comment on expanding VA's incentivized loss-mitigation options available to servicers that assist veterans whose VA-guaranteed loans are in default. Although VA identifies, below, specific topics and questions for discussion, it encourages commenters to discuss any other topic that will help VA as it explores whether to expand the incentivized loss-mitigation options outlined in VA regulation.

DATES: Comments must be received on or before [insert date 90 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments must be submitted through www.regulations.gov. Except as provided below, comments received before the close of the comment period will be available at www.regulations.gov for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received:

<https://www.regulations.gov>. VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals

not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in any future proposed rulemaking or otherwise addressed by VA.

FOR FURTHER INFORMATION CONTACT: Andrew Trevayne, Assistant Director for Loan and Property Management, and Stephanie Li, Chief of Regulations, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202-632-8862. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: VA provides financial incentives to loan servicers for helping veterans avoid the foreclosure of their VA-backed loans. 38 CFR 36.4319. As VA continues to consider how best to serve veterans, VA is requesting public comment on whether expanding VA's incentivized loss-mitigation tools for servicers might help veterans retain their homes. VA is also requesting specific comments on the recent use of VA's loan refunding authority and loan deferment as temporary home retention options to assist certain veteran borrowers.

In response to the COVID-19 pandemic, VA developed new, temporary home retention options to assist veterans with VA-guaranteed loans who were financially affected, either directly or indirectly, by the COVID-19 National Emergency. Use of these new options, including loan deferment,¹ the Veterans Assistance Partial Claim Payment program (VAPCP),² and the COVID-19 Refund

¹ VA Circular 26-21-19, Loan Deferment as a COVID-19 Home Retention Option (Sept. 29, 2021, expiring July 1, 2023 unless otherwise renewed), https://www.benefits.va.gov/HOMELOANS/resources_circulars.asp.

² 38 CFR 36.4800 et seq. (sunset date October 28, 2022)

Modification,³ is limited to certain guaranteed loans (i.e., those in which a veteran has outstanding payments associated with a COVID-19 forbearance). A common thread across these three temporary home retention options is the veteran's ability to defer missed mortgage payments until the first of the following occurs: (i) the maturity date of the VA-guaranteed loan, (ii) the date of transfer of the property, or (iii) the date the guaranteed loan is refinanced or otherwise paid in full. The major difference is that VA does not act as a mortgage investor of last resort for the loan deferment option but does for the VAPCP and the COVID-19 Refund Modification. While VA has seen significant use of both the VAPCP and the COVID-19 Refund Modification, fewer servicers have opted for loan deferment.

As VA explores changes to its incentivized loss-mitigation options, VA is interested in understanding whether loan deferment would be a viable incentivized loss-mitigation option. VA is also interested in how changes to the VAPCP or COVID-19 Refund Modification programs might affect veterans, servicers, and taxpayers. In sum, VA is requesting public comment on whether expanding VA's incentivized loss-mitigation tools, outlined at 38 CFR 36.4319, might further assist veterans who have VA-backed loans to retain their homes, and is including the following specific questions:

Questions related to flexibility/adaptability of VA's incentivized loss-mitigation options

1. Are VA's incentivized loss-mitigation options, outlined at 38 CFR 36.4319, flexible and adaptable, particularly for those transitional times when the

³ VA Circular 26-21-13, COVID-19 Home Retention Waterfall and COVID-19 Refund Modification (July 23, 2021, expiring July 1, 2023 unless otherwise renewed), https://www.benefits.va.gov/HOMELOANS/resources_circulars.asp.

market is in flux (e.g., rising interest rate environments, recession, etc.)? Please, where possible, provide data and evidence in support of your response. What could VA do to increase the flexibility and adaptability of section 36.4319's incentivized loss-mitigation options?

Questions related to evaluating VA loss-mitigation options

2. Should VA have a prescribed order of loss-mitigation options that servicers must follow, or would stakeholders like to see VA's regulation continue to provide VA's preferred order of consideration (i.e., a hierarchy for review)? If VA were to incentivize options such as loan deferment and/or a partial loan refunding option (e.g., VAPCP or COVID-19 Refund), where should these options rank among other options, and should they be either prescribed or preferred?

3. During the COVID-19 pandemic, veterans were given more opportunity to select the home retention option that they thought would be best for them. Under what circumstances, if any, should veterans retain opportunities to select from VA loss-mitigation options? How would giving veterans the ability to select from VA loss-mitigation options impact servicers? If VA were to switch to a prescribed order of loss-mitigation options that servicers must follow, what limitations, if any, should be placed on veterans' ability to select from them?

4. During the COVID-19 pandemic, certain loss-mitigation options were offered without the requirement of collecting financial information. Moving beyond the pandemic, under what circumstances should VA require servicers to collect financial information before a loss-mitigation option is selected? Under what circumstances might a trial payment plan serve as a substitute for the collection of financial information?

Questions related to loan deferment, VAPCP, and COVID-19 Refund

Modifications

5. How should VA develop a loan deferment option that would assist veterans without placing undue burden on servicers? For example, if VA were to incentivize a hybrid loan deferment/repayment plan in which servicers would defer the missed principal and interest and establish a loan repayment plan for missed taxes and insurance, would that address potential concerns related to short-term lost income from deferring missed mortgage payments? For veterans, what consumer protection concerns should VA be aware of in considering a loan deferment loss-mitigation option?

6. In what way(s), if any, should VA use the VAPCP and/or COVID-19 Refund Modification after the COVID-19 national emergency? VA is particularly interested in data and evidence showing whether the VAPCP and/or COVID-19 Refund Modification programs have assisted veterans, servicers, and taxpayers.

7. What challenges would exist for veterans, servicers, holders, and VA, if VA were to develop a loss-mitigation option similar to the VAPCP, but with a requirement for repayment at a low interest rate (rather than the zero percent interest rate under the VAPCP)? What hurdles might servicers face in executing such loan documents on behalf of VA? What if VA required servicers to service such loans on VA's behalf?

8. Would a low-interest second loan option similar to the VAPCP be more helpful to veterans and/or servicers than a loan deferment loss-mitigation option, and what data and evidence exist to support your response? What sort of financial evaluation would be appropriate to determine whether a low-interest second loan would be an appropriate loss-mitigation option for a veteran, as opposed to VA's existing loss-mitigation options at 38 CFR 36.4319?

9. What, if any, limitations should VA place on a deferment-style loss-mitigation option, including minimum/maximum deferment amounts, lifetime uses, etc.?

Questions related to incentive payments

10. What kind of incentive payment might be appropriate to make loan deferment a more viable option for servicers and VA? What kind of incentive payment might be appropriate for a loss-mitigation option similar to the VAPCP or COVID-19 Refund Modification?

11. How could VA structure an incentive payment that does not encourage servicers to use one of these loss-mitigation options if more financially feasible options are available to assist the veteran?

Questions related to investor requirements

12. What, if any, Government National Mortgage Association (Ginnie Mae) specific investor requirements should VA consider when evaluating changes to VA loss-mitigation options, including the introduction of a deferment-style loss-mitigation option?

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying

both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on October 11, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director,

Office of Regulation Policy & Management,

Office of General Counsel,

Department of Veterans Affairs.

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